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TY:

Legend

Service 1 =
Service 2 =
Taxpayer =
X =
Primary Network Airports =

Dear

This responds to a letter ruling request in which you request that the IRS issue the following rulings:

1. The amount paid for air transportation service provided by taxpayer in Service 1 is exempt under § 4281 of the Internal Revenue Code from the excise tax imposed by § 4261.
2. The amount paid for air transportation service provided by taxpayer in Service 2 is exempt under § 4281 from the excise tax imposed by § 4261.

The following facts and representations have been submitted in the request:

Taxpayer operates business jets, including an on-demand, short-haul (under X miles) air travel service. Taxpayer targets regional business travelers, using ultra-light jets with certificated take-off weights of under 6,000 lbs. All transportation begins and ends in the continental United States. The target customers are regional business travelers seeking to complete same-day travel, multi-city same-day trips, and complex travel itineraries.

Taxpayer plans to offer two types of jet service, Service 1 and Service 2. With Service 1, the customer reserves the entire aircraft, designates a desired departure time window, a required arrival time, and departure and arrival locations.

With Service 2, the customer reserves a seat on an aircraft, designates desired departure and arrival time windows, and departure and arrival locations. Service 2 flights do not require passengers to change planes or stop more than once en route for other passengers. Service 2 departure and arrival locations are limited to a small number of Primary Network Airports, the number of which Taxpayer plans to expand over a period of years.

For both services, a reservation may be made no more than 45 days in advance. Taxpayer provides an instant, fixed-price, reservation confirmation or rejection, using a proprietary, state of the art logistics system that optimizes aircraft availability in real-time while preserving existing obligations. The logistics system processes Service 1 and Service 2 reservations the same way. A reservation is rejected only if Taxpayer has committed all available flight resources and the request cannot be reconciled with existing commitments. The exact flight time is confirmed 24 hours before the flight. In certain circumstances, Taxpayer has the discretion to delay the departure time for a passenger who is running late; however, Taxpayer will not delay a flight if it will inconvenience another passenger.

Taxpayer does not maintain a published flight schedule and offers no walk-up service. Taxpayer generally provides services during hours that best accommodate business travel.

Taxpayer holds an FAA Air Carrier Certificate authorizing it to conduct on-demand operations under Federal Aviation Regulations. Under Rev. Rul. 78-75, 1978-1 C.B. 340, the status of an operator for FAA purposes is not determinative for purposes of the federal excise tax on air transportation.

For both services, the amounts in question are paid to Taxpayer. If the exemption under § 4281 does not apply, Taxpayer would have to collect the tax (§ 4291) and pay it over to the government (§ 40.6011(a)-1(a)(3) of the Excise Tax Procedural Regulations).

Section 4261(a) imposes a tax on the amount paid for taxable transportation of any person by air. Taxable transportation is defined in § 4262(a)(1) to include transportation by air that begins and ends in the continental United States.

Section 4261(b) imposes a tax for each domestic segment of taxable transportation by air. The term “domestic segment” means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

Section 4281 provides that the taxes imposed by section 4261 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line.

Section 49.4263-5(c) the Facilities and Services Excise Taxes Regulations defines the term “operated on an established line” to mean operated with some degree of regularity between definite points. Further, that term does not necessarily mean that strict regularity of schedule is maintained; that the full run is always made; that a particular route is followed, or that intermediate stops are restricted. The term implies that the person rendering the service maintains and exercises control over the direction, route, time, number of passengers carried, etc.

Section 49.4263-5(a) of the Regulations generally provides that the § 4281 exemption applies to amounts paid for the transportation of persons on a small aircraft of the type sometimes referred to as “air taxis.” Although the term “air taxis” is not defined in the regulations, it is described in Lake Mead Air, Inc. v. United States, 991 F. Supp. 1209, 1212 (D. Nev. 1997), as “an airplane for hire, subject to the whims of a particular customer. Except to the hiring customer, its route is wholly unpredictable and unreliable.”

In Rev. Rul. 66-301, 1966-2 C.B. 475, the operator of a helicopter offered rides on a walk-up basis at a community fair. There were no scheduled or fixed times of departure and no advance bookings or reservations were available. The existence of the rides was contingent upon the fair that lasted only a few days a year. Reasoning that a schedule other than customer demands is necessary to be conducted with “some degree of regularity,” the revenue ruling concluded that a sporadic operation like the community fair helicopter rides was not operated on an established line.

In Rev. Rul. 72-617, 1972-2 C.B. 580, an air taxi carrier entered into a contract with the United States Postal Service to provide overnight air mail service between two cities. Before entering into the contract, the carrier did not fly to these cities. The contract provided for exclusive use of the aircraft for six regularly scheduled round trips weekly between certain overnight hours to meet postal requirements for an overnight exchange of mail. Although the flights met the “some degree of regularity” requirement of the regulations, the revenue ruling concluded that the aircraft making the flights was not operated on an established line because the carrier did not retain control over the direction, route, time, or cargo carried.

The aircraft providing the transportation at issue here all have a certificated takeoff weight of less than 6,000 pounds. Therefore, the amount paid for the transportation is exempt from tax unless the aircraft are “operated on an established line.”

Taxpayer argues that it has no schedule and that it has no control over when and where it will fly, but that these decisions are dictated by customer demands and the logistics system.

Service 1 is a traditional charter subject to the whims of a particular customer. Service 2 is not. Service 2 destinations are chosen by customers from a set of definite points determined by Taxpayer. For example, the passenger could not request a Service 2 flight outside of the Primary Network Airports. Thus, Taxpayer maintains and exercises control over the flights offered with Service 2. However, Taxpayer does not meet the “some degree of regularity” aspect of “on an established line” because it does not maintain a schedule of flights and any perceivable pattern is due to customer demand.

Accordingly, we conclude as follows:

1. The amount paid for air transportation service provided by taxpayer in Service 1 is exempt under § 4281 of the Internal Revenue Code from the excise tax imposed by § 4261.

2. The amount paid for air transportation service provided by taxpayer in Service 2 is exempt under § 4281 from the excise tax imposed by § 4261.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Frank Boland

Frank Boland
Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)